

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isaac Forman	Team: Squad #1	CCRB Case #: 201802626	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 03/24/2018 1:08 AM	Location of Incident: Inside of § 87(2)(b)	Precinct: 67	18 Mo. SOL 9/24/2019	EO SOL 9/24/2019	
Date/Time CV Reported Sat, 03/24/2018 7:10 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/04/2018 10:58 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Alan Chau	01257	940986	067 PCT
2. POM Kenneth Triolo	13535	957229	067 PCT
3. POM Miguel Vanbrakle	28743	955616	067 PCT
4. POM Melvin Carpio	19803	958371	067 PCT
5. DTS Nicholas Nelson	05504	947072	067 PCT
6. POM John Nemeth	17897	955259	067 PCT
7. An officer			067 PCT
8. Officers			067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Deirdre Kelleher	17088	957731	067 PCT
2. POF Shequana Galloway	23961	963036	067 PCT
3. POF Christina Lanier	17607	958791	067 PCT
4. POM Kyle Hosein	24950	962481	067 PCT
5. POM Ihab Ginem	11307	962433	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Alan Chau	Abuse: Sergeant Alan Chau entered § 87(2)(b) in Brooklyn.	
B. An officer	Force: An officer used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
C.POM Melvin Carpio	Discourtesy: Police Officer Melvin Carpio spoke discourteously to § 87(2)(b)	
D.POM Melvin Carpio	Force: Police Officer Melvin Carpio used physical force against § 87(2)(b)	
E.POM Miguel Vanbrakle	Force: Police Officer Miguel Vanbrakle used physical force against § 87(2)(b)	
F.POM Melvin Carpio	Force: Police Officer Melvin Carpio used physical force against § 87(2)(b)	
G.POM Miguel Vanbrakle	Force: Police Officer Miguel Vanbrakle used physical force against § 87(2)(b)	
H.POM Miguel Vanbrakle	Discourtesy: Police Officer Miguel Vanbrakle spoke discourteously to § 87(2)(b)	
I.POM Melvin Carpio	Force: Police Officer Melvin Carpio struck § 87(2)(b) with an asp.	
J. Officers	Force: Officers used physical force against § 87(2)(b)	
K. An officer	Force: An officer used physical force against § 87(2)(b)	
L. An officer	Force: An officer used physical force against § 87(2)(b)	
M.POM Kenneth Triolo	Force: Police Officer Kenneth Triolo used physical force against § 87(2)(b)	
N.DTS Nicholas Nelson	Force: Detective Nicholas Nelson used physical force against § 87(2)(b)	
O.POM Melvin Carpio	Force: Police Officer Melvin Carpio used physical force against § 87(2)(b)	
P. An officer	Force: An officer used physical force against § 87(2)(b)	
Q.DTS Nicholas Nelson	Discourtesy: Detective Nicholas Nelson spoke discourteously to § 87(2)(b)	
R.POM John Nemeth	Discourtesy: Police Officer John Nemeth spoke discourteously to § 87(2)(b)	
S.POM Melvin Carpio	Discourtesy: Police Officer Melvin Carpio spoke discourteously to § 87(2)(b)	
T.POM John Nemeth	Force: Police Officer John Nemeth used a taser on § 87(2)(b)	
U.POM John Nemeth	Discourtesy: Police Officer John Nemeth spoke discourteously to § 87(2)(b)	
V. An officer	Off. Language: An officer made remarks to § 87(2)(b) based upon race.	
W. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	

Case Summary

On March 24, 2018, Captain Tao Chen called the IAB Command Center and filed this complaint. Log #2018-12326 was generated and it was received at the CCRB on April 4, 2018.

On March 24, 2018, at approximately 1:08am, officers responded to § 87(2)(b) in Brooklyn in regards to a 911 call reporting a party in the basement of the building. Sgt. Alan Chau entered the basement (**Allegation A: Abuse of Authority** § 87(2)(g)). An unidentified officer approached § 87(2)(b) behind a bar and allegedly punched her (**Allegation B: Force** § 87(2)(g)). As § 87(2)(b) was exiting, an altercation began with PO Melvin Carpio, during which PO Carpio stated “I need your fucking ID,” and “I just fucking explained it.” (**Allegation C: Discourtesy** § 87(2)(g)). After a physical struggle ensued, PO Carpio and PO Miguel Van Brakle used hand strikes against § 87(2)(b) and took him to the ground (**Allegations D, E, F, and G: Force** § 87(2)(g)). During the struggle, PO Van Brakle allegedly told § 87(2)(b) “get the fuck off of me” (**Allegation H: Discourtesy-Exonerated**). As § 87(2)(b) was on top of PO Van Brakle, PO Carpio struck him with an asp (**Allegation I: Force** § 87(2)(g)). As this was going on, unidentified officers allegedly took § 87(2)(b) to the ground, punched, and kicked her (**Allegations J, K, and L: Force** § 87(2)(g)). While the officers were struggling with § 87(2)(b) struck PO Shequana Galloway with a chair. PO Kenneth Triolo tackled § 87(2)(b) to the ground (**Allegation M: Force** § 87(2)(g)). § 87(2)(b) was then placed into handcuffs. After being cuffed, Det. Nicholas Nelson and PO Carpio allegedly punched § 87(2)(b) (**Allegations N and O: Force** § 87(2)(g)). An unidentified officer then allegedly kicked § 87(2)(b) in the face (**Allegation P: Force** § 87(2)(g)). Once § 87(2)(b) was in handcuffs, Det. Nelson stated “Asshole. Wanna throw a chair at cops? Son of a bitch. Wanna throw a chair at cops? Piece of shit” (**Allegation Q: Discourtesy** § 87(2)(g)). As § 87(2)(b) was on top of PO Van Brakle, PO John Nemeth approached. PO Nemeth told § 87(2)(b) to “get the fuck off,” while PO Carpio allegedly told § 87(2)(b) “get the fuck on the ground” (**Allegations R and S: Discourtesy** § 87(2)(g)). PO Nemeth then tasered § 87(2)(b) (**Allegation T: Force** § 87(2)(g)). Once § 87(2)(b) was in handcuffs, he continued to scream to others in the basement. PO Nemeth told § 87(2)(b) to “stay the fuck down” (**Allegation U: Discourtesy** § 87(2)(g)). During this incident, unidentified officers allegedly called § 87(2)(b) a “nigger” and asked § 87(2)(b) “Are you fucking crazy? Flinging chairs? Are you fucking dumb?” (**Allegations V and W: Offensive Language and Discourtesy** § 87(2)(g)). Ten people were arrested during this incident including § 87(2)(b) and § 87(2)(b).

Body Worn Camera (BWC) footage was provided from the following officers: PO Nemeth (Board Review 30 and 48), PO Galloway (Board Review 31, 46, and 51), PO Triolo (Board Review 32), PO Dierdre Kelleher (Board Review 33, 37, 41, 42, 43, 45, and 49), PO Christina Lanier (Board Review 34, 44, 50, 52, and 53), PO Carpio (Board Review 35 and 38), PO Van Brakle (Board Review 36), PO Kyle Hosein (Board Review 39), and PO Ihab Ginem (Board Review 40 and 47).

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Alan Chau entered § 87(2)(b) in Brooklyn.

It is undisputed that officers entered the basement of § 87(2)(b) in Brooklyn. Both § 87(2)(b) and § 87(2)(b) testified that they went to § 87(2)(b) in Brooklyn, for a party (Board Review 01, 02).

Event #§ 87(2)(b) was generated in regards to a female caller at 1:08am on March 24, 2018, reporting a large party in the basement of § 87(2)(b) § 87(2)(b) in Brooklyn. The female stated that they were smoking marijuana and selling illegal alcohol (Board Review 03).

In the 911 recording of that call, the female provides her last name as § 87(2)(b). She alleged that there is a loud party going on downstairs. She states that there is a strong smell of marijuana and illegal alcohol being served. She was not sure how many people were there. She stated that she has repeatedly called about parties in the basement (Board Review 04).

Of the ten arrests occurring during this incident, multiple include charges of operating an illegal social club and illegal sale of alcohol.

PO Nemeth's BWC footage begins with Sgt. Chau walking through the basement door followed by PO Nemeth. The door appears to be unlocked. Initially, loud music can be heard from immediately outside the basement door (Board Review 30).

Sgt. Chau, assigned to club enforcement at the time, testified that he received the above-noted radio run. He described the location as a chronic illegal social club and that he had been there two weeks prior to shut down a party. Sgt. Chau initially responded to the location and drove past two to three times. He observed two to three civilians standing outside the location. He also observed approximately three people enter the location. Sgt. Chau observed a security guard search the individuals then allow them into the basement. Sgt. Chau could hear music coming from the basement as he drove past. Sgt. Chau called the rest of the club team, mustered up near the location, then returned to § 87(2)(b). Sgt. Chau exited the vehicle and approached the location. He then entered through the unlocked basement door and observed a large party. Sgt. Chau testified that they entered the location to conduct a business inspection (Board Review 05).

An officer may enter an open business in the same manner that a private citizen may. People v. Perez, 78 A.D.2d 703 (2d Dept. 1980) (Board Review 06).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation (B) Force: An officer used physical force against § 87(2)(b)

§ 87(2)(b) alleged that an officer used physical force against the bartender, who he identified as § 87(2)(b).

§ 87(2)(b)'s arrest report lists her as the bartender. As there is no female arrested with the last name § 87(2)(b) nor any other female with the first name § 87(2)(b) the investigation identified § 87(2)(b) as the victim of the allegation (Board Review 08).

§ 87(2)(b) was uncooperative with the investigation.

§ 87(2)(b) testified that an officer, who he could not physically describe, approached § 87(2)(b) who was standing behind the bar. The officer punched § 87(2)(b) in the face one time, causing her to fall to the ground. She was then placed into handcuffs (Board Review 01).

At 1:32:14 in PO Nemeth's BWC footage, Sgt. Chau approaches the bar in the rear of the basement where § 87(2)(b) is standing. He tells § 87(2)(b) to put her hands behind her back and then appears to pull her hands behind her back. He then tells PO Nemeth to handcuff her. § 87(2)(b) appears to pull away from PO Nemeth but, with PO Carpio and PO Galloway's assistance, PO Nemeth handcuffs § 87(2)(b). At no point does any officer strike § 87(2)(b). § 87(2)(b) is not seen on the ground in this video.

Sgt. Chau testified that, after entering the basement, he immediately went to bar in the rear. There, he briefly spoke to the bartender. He then briefly spoke to § 87(2)(b) who identified himself as being responsible for the party. Sgt. Chau then walked away. He was not sure if the civilians had been placed into handcuffs at this point. Sgt. Chau denied punching § 87(2)(b) and did not observe any other officer do so (Board Review 05).

PO Nemeth testified that he followed Sgt. Chau to the bar in the rear of the basement. Sgt. Chau immediately told PO Nemeth to place § 87(2)(b) into handcuffs. PO Nemeth immediately did so. She initially resisted by pulling away from PO Nemeth but PO Nemeth was able to pull her arms behind her back and place her into handcuffs. He denied punching § 87(2)(b) or observing any other officer do so (Board Review 09).

§ 87(2)(g)

Allegation (C) Discourtesy: Police Officer Melvin Carpio spoke discourteously to § 87(2)(b)

This allegation was not raised by § 87(2)(b). It is captured in PO Carpio's BWC footage.

In PO Carpio's BWC footage, at 1:34:17, § 87(2)(b) appears to be walking towards the exit of the basement. He appears to push past PO Carpio. PO Carpio asks why § 87(2)(b) pushed him then asks for § 87(2)(b)'s ID. § 87(2)(b) begins yelling at PO Carpio asking why he needs to

provide his ID “for a cigarette.” PO Carpio continues to ask for § 87(2)(b) s ID. PO Carpio asks approximately eight to ten times. At 1:35:53, PO Carpio states, “I need your fucking ID.” § 87(2)(b) continues to ask why and not provide his ID. PO Carpio then states, “I just fucking explained it.” During this interaction, there are multiple civilians around § 87(2)(b) yelling at PO Carpio (Board Review 35).

PO Carpio testified that as § 87(2)(b) was exiting the basement, § 87(2)(b) purposely pushed him. PO Carpio grabbed § 87(2)(b) by his arm and pulled him to the side. He asked § 87(2)(b) for his ID. § 87(2)(b) refused to provide it. PO Carpio initially denied saying “give me your fucking ID,” and “I just fucking explained it.” Upon being presented with his BWC footage during his interview, PO Carpio confirmed that the voice making those statements was his own. He testified that he could not recall why he used profanity but that he had asked § 87(2)(b) for his ID more than ten times at that point and § 87(2)(b) had still not provided it (Board Review 10).

Where an officer uses an otherwise discourteous word during a stressful encounter where that officer is attempting to maintain control of the situation, that act does not rise to the level of actionable misconduct. NYPD Disciplinary Case No. 79627/04 (Board Review 11).

§ 87(2)(g)

Allegation (D) Force: Police Officer Melvin Carpio used physical force against § 87(2)(b)

Allegation (E) Force: Police Officer Miguel Van Brakle used physical force against § 87(2)(b)

Allegation (F) Force: Police Officer Melvin Carpio used physical force against § 87(2)(b)

Allegation (G) Force: Police Officer Miguel Van Brakle used physical force against § 87(2)(b)

Allegation (H) Discourtesy: Police Officer Miguel Van Brakle spoke discourteously to

§ 87(2)(b)

Allegation (I) Force: Police Officer Melvin Carpio struck § 87(2)(b) with an asp.

It is undisputed that PO Carpio and PO Van Brakle used physical force against § 87(2)(b)

§ 87(2)(b) testified that after being asked for his ID, he was taken to the ground. He landed on his side. He then pushed himself up off the ground. As soon as he did, PO Carpio struck him approximately five times on the right side of his face. PO Carpio pulled on § 87(2)(b) s arms. As a result, § 87(2)(b) fell to the ground a second time. This time he landed on top of PO Van Brakle. § 87(2)(b) was lying face to face with PO Van Brakle. PO Van Brakle told § 87(2)(b) “get the fuck off of me.” As § 87(2)(b) lay on top of PO Van Brakle, he was struck approximately three times on his back with an asp. He remained on top of PO Van Brakle at this point. § 87(2)(b) testified that he could not get off PO Van Brakle because PO Van Brakle was holding onto him. § 87(2)(b) denied attempting to punch or kick any officers (Board Review

01).

§ 87(2)(b)'s arrest photo shows no noticeable injuries to his face or head (Board Review 57). PO Lanier's BWC footage depicts the beginning of the physical interaction between § 87(2)(b) and the officers. At 1:36:13, PO Carpio is holding § 87(2)(b)'s jacket. § 87(2)(b) pulls PO Carpio's hand off of him. From that point, due to the darkness and the chaotic nature of the interaction, no more observations about the force used by § 87(2)(b) or officers can be seen. This is true of all officers' BWC footage in regards to these allegations (Board Review 34).

PO Carpio's BWC fell off towards the beginning of the physical struggle and thus did not capture his use of an asp.

PO Van Brakle filled out TRI § 87(2)(b) in regards to force used against § 87(2)(b). It states that § 87(2)(b) used a hand strike against the officers. It states that PO Van Brakle used a forcible take down and hand strike against § 87(2)(b) (Board Review 12). PO Carpio filled out TRI #§ 87(2)(b) which states that § 87(2)(b) used a hand strike against officers. It states that he used a forcible takedown, a hand strike, and his baton against § 87(2)(b). The TRI notes that PO Carpio suffered contusions and lacerations (Board Review 13).

AIDED Report #§ 87(2)(b) was filled out for PO Van Brakle. The narrative states that he suffered pain and swelling to his face from being struck by § 87(2)(b) (Board Review 14).

PO Van Brakle testified that he initially observed § 87(2)(b) struggling with PO Kelleher and PO Carpio. The officers appeared to be attempting to handcuff § 87(2)(b). PO Van Brakle ran towards § 87(2)(b) and grabbed his arm. § 87(2)(b) immediately pulled his arm away from PO Van Brakle. PO Van Brakle continued to grab at § 87(2)(b)'s arms but was unable to control them. § 87(2)(b) then turned towards PO Van Brakle and punched PO Van Brakle with a closed fist on the right side of his face. § 87(2)(b) then turned to PO Kelleher and attempted to punch her but did not make contact. He then turned to PO Carpio and punched PO Carpio multiple times in his body. PO Van Brakle then punched § 87(2)(b) one time on the left side of § 87(2)(b)'s face. PO Van Brakle testified that he punched § 87(2)(b) because he was resisting being handcuffed and had struck multiple officers. PO Van Brakle's punch appeared to have no impact. PO Carpio then punched § 87(2)(b) one time on the left side of § 87(2)(b)'s face. PO Van Brakle was then able to grab § 87(2)(b)'s arms. At that point, they took § 87(2)(b) to the ground. PO Van Brakle testified that they took § 87(2)(b) to the ground because he was still resisting and attempting to strike officers. Once on the ground, PO Van Brakle continued to pull on § 87(2)(b)'s arm to get it behind his back. PO Van Brakle then heard a scream and PO Carpio walked away towards the scream. At that point, § 87(2)(b) was able to push himself up off the ground, causing the officers to lose contact with him. § 87(2)(b) began moving towards the exit. PO Van Brakle followed § 87(2)(b) and grabbed and turned § 87(2)(b) around so they were facing one another. PO Van Brakle then wrapped his arms around the back of § 87(2)(b)'s head and dropped his weight, causing both he and § 87(2)(b) to fall to the ground. He did so because § 87(2)(b) continued to resist being arrested and had attempted to flee. § 87(2)(b) landed on top of PO Van Brakle. PO Van Brakle kept his arms wrapped around the back of § 87(2)(b)'s head as he feared if he let go, § 87(2)(b) would flee. PO Kelleher tried to pull § 87(2)(b)'s arms behind his back but was unable to do so. § 87(2)(b) had his hands at his side and

PO Van Brakle did not know what he was doing with them. While § 87(2)(b) was on top of PO Van Brakle, PO Van Brakle was struggling to breathe because of § 87(2)(b)'s weight. PO Van Brakle testified that he began to lose consciousness because he could not breathe, but did not want to let go of § 87(2)(b) because he feared § 87(2)(b) would assault him again and flee. PO Van Brakle could not recall any officer using an asp on § 87(2)(b). He denied telling § 87(2)(b) to "get the fuck off of me" (Board Review 15).

PO Carpio testified that because § 87(2)(b) refused to provide his identification, he decided to place him under arrest for disorderly conduct. He told § 87(2)(b) to put his hands behind his back. PO Carpio grabbed § 87(2)(b)'s left hand while PO Van Brakle grabbed § 87(2)(b)'s right hand. § 87(2)(b) immediately punched PO Van Brakle and continued to throw punches at PO Van Brakle. PO Carpio testified that he then punched § 87(2)(b). He could not recall where on § 87(2)(b) he struck, nor if he punched § 87(2)(b) once or multiple times. PO Carpio and PO Van Brakle then took § 87(2)(b) to the ground. PO Carpio did not know how they got him to the ground. He testified that they took him to the ground because § 87(2)(b) was attempting to punch officers. While they were on the ground, § 87(2)(b) ended up on top of PO Van Brakle. PO Carpio was not sure how this happened. § 87(2)(b) continued to kick his legs and swing his arms. PO Carpio testified that he then deployed his asp and struck § 87(2)(b) multiple times in his legs. He did so because § 87(2)(b) continued to resist, was kicking and punching, and was lying on top of PO Van Brakle (Board Review 10).

Force may be used when it is reasonable to ensure the safety of a member of the service or when it is reasonable to place a person into custody. Application of force must be reasonable under the circumstances. NYPD Patrol Guide, Procedure 221-01 (Board Review 16). An impact weapon, such as an asp, should only be used against individuals who are actively resisting (Board Review 61). Where an officer uses an otherwise discourteous word during a stressful encounter where that officer is attempting to maintain control of the situation, that act does not rise to the level of actionable misconduct. NYPD Disciplinary Case No. 79627/04 (Board Review 11).

§ 87(2)(g)

Allegation (J) Force: Officers used physical force against § 87(2)(b)

Allegation (K) Force: An officer used physical force against § 87(2)(b)

Allegation (L) Force: An officer used physical force against § 87(2)(b)

§ 87(2)(b) alleged that officers used physical force against § 87(2)(b)

§ 87(2)(b) was uncooperative with the investigation. Thus, she did not provide a statement for this investigation.

§ 87(2)(b) testified that § 87(2)(b) approached the officers that were dealing with § 87(2)(b). Multiple officers, who § 87(2)(b) could not describe, threw § 87(2)(b) to the floor. An officer, who § 87(2)(b) was only able to describe as male, white, with a big build, and in uniform, punched and kicked § 87(2)(b). § 87(2)(b) testified that he did not see § 87(2)(b) do anything to resist arrest (Board Review 02).

§ 87(2)(b) testified that he observed both male and female officers interacting with § 87(2)(b). He could not provide any further description. He could not describe what they were doing. He denied observing any officer strike § 87(2)(b) (Board Review 01).

TRI report #§ 87(2)(b) was filled out by Sgt. Chau and indicates that he pulled on her arms to place her into handcuffs (Board Review 59).

Sgt. Chau denied using force against § 87(2)(b) or any other female (Board Review 05).

All officers interviewed denied taking any female to the ground, hitting, or kicking any female civilian (Board Review 05, 09, 10, 15, 20, 21, 54, 55).

§ 87(2)(b) could not identify the officer that allegedly took these actions and § 87(2)(b) did not allege any of these actions. § 87(2)(g)

Allegation (M) Force: Police Officer Kenneth Triolo used physical force against § 87(2)(b)

Allegation (N) Force: Detective Nicholas Nelson used physical force against § 87(2)(b)

Allegation (O) Force: Police Officer Melvin Carpio used physical force against § 87(2)(b)

Allegation (P) Force: An officer used physical force against § 87(2)(b)

Allegation (Q) Discourtesy: Detective Nicholas Nelson spoke discourteously to § 87(2)(b)

It is undisputed that PO Triolo, Det. Nelson, and PO Carpio used physical force against § 87(2)(b). The circumstances of Det. Nelson's force and PO Carpio's force are in question. § 87(2)(b) alleged that Det. Nelson used profanities in speaking to him.

§ 87(2)(b) testified that, in reaction to the officers fighting with § 87(2)(b) he picked up a metal folding chair and threw it. The chair did not hit any officer. An officer then threw § 87(2)(b) to the ground. He was then quickly placed into handcuffs. While he was on the ground, after being handcuffed, an officer punched § 87(2)(b) in his left eye two to three times. He then kicked § 87(2)(b) in the left eye. The officer then punched § 87(2)(b) an additional two times in the left eye. § 87(2)(b) denied doing anything to resist arrest. § 87(2)(b) was

unable to described these officers (Board Review 02).

§ 87(2)(b) medical records indicate that he suffered swelling to his left eye. They indicate that he suffered no acute fracture but possibly had an old fracture (Medical Records).

§ 87(2)(b) arrest photo shows substantial swelling to his left eye (Board Review 17).

PO Galloway's BWC footage captures § 87(2)(b) grab the chair at 1:37:31. A couple of seconds later, PO Galloway's camera spins and people start screaming and an officer is repeatedly heard calling a 10-13. Later, at 1:40:21, a male officer's voice, coming from the direction where Det. Nelson is crouching with § 87(2)(b) says, "Asshole. Wanna throw a chair at cops? Son of a bitch. Wanna throw a chair at cops? Piece of shit." It is not clear from the video who else is around § 87(2)(b) at that point (Board Review 31).

Det. Nelson filled out TRI #§ 87(2)(b). It indicates that he used a hand strike against § 87(2)(b) (Board Review 18). PO Carpio filed out TRI #§ 87(2)(b) which indicates that he used a hand strike against § 87(2)(b) (Board Review 19).

PO Triolo testified that he was standing in the vicinity of the officers fighting with § 87(2)(b) making sure that other civilians did not interfere. As he was standing there, he observed § 87(2)(b) throw a chair at PO Galloway, striking her. § 87(2)(b) then began running away, towards the rear of the basement. PO Triolo chased after him and caught up. He then bear-hugged § 87(2)(b) from behind and dropped his weight, causing both to fall to the ground. He testified that he took § 87(2)(b) to the ground because § 87(2)(b) had just struck PO Galloway with a chair. PO Triolo landed on top of § 87(2)(b). At this point, § 87(2)(b) had his arms under his chest. PO Triolo pulled on one of § 87(2)(b) arms until he was able to pull it behind § 87(2)(b) back. He then pulled the other arm behind § 87(2)(b) back. PO Triolo did not observe any officer kick or punch § 87(2)(b) and denied doing so himself (Board Review 20).

Det. Nelson testified that he observed § 87(2)(b) pick up a chair and strike PO Galloway with it. Det. Nelson initially ran to PO Galloway to make sure she was okay. He observed § 87(2)(b) pick up the chair again. Det. Nelson grabbed § 87(2)(b) arm preventing him from picking up the chair again. § 87(2)(b) then attempted to punch Det. Nelson. § 87(2)(b) punch missed and, as a result, § 87(2)(b) began to fall to the floor. As § 87(2)(b) was falling to the floor, Det. Nelson grabbed § 87(2)(b) by his arm and lowered him to the floor. Det. Nelson went to the ground with § 87(2)(b). He and approximately two other officers, he was not sure who, rolled § 87(2)(b) onto his stomach. Det. Nelson then struggled to pull § 87(2)(b) arms behind his back as § 87(2)(b) was tensing them under his body. Det. Nelson denied punching or kicking § 87(2)(b) and did not observe any other officer do so. Det. Nelson denied stating "asshole wanna throw a chair at cops, son of a bitch." Upon being presented with the video footage where the statement can be heard, he denied that it was his voice and could not recognize whose it was (Board Review 21).

PO Carpio testified that he had no recollection of being physically involved with § 87(2)(b) arrest. He could not recall assisting in arresting anyone other than § 87(2)(b). He also did not recall seeing who was physically involved in § 87(2)(b) arrest. During his interview, PO

Carpio was presented with the TRI report that he filled out stating that he used a hand strike on § 87(2)(b). He testified that he still could not recall if or when he did so (Board Review 10).

PO Nemeth testified that after § 87(2)(b) threw a chair at PO Galloway, PO Triolo and Det. Nelson grabbed § 87(2)(b) and took him to the ground. PO Nemeth observed the officers struggling to get § 87(2)(b) arms behind his back so PO Nemeth approached and assisted by pulling on § 87(2)(b) arm. Once § 87(2)(b) was in handcuffs, PO Nemeth walked away, towards where officers continued were struggling with § 87(2)(b). PO Nemeth denied observing any officer punch or kick § 87(2)(b). PO Nemeth was presented with his BWC footage during his interview. He was directed to 1:40:21 and testified that the voice that states, “asshole, wanna throw a chair at cops, son of a bitch,” is Det. Nelson’s (Board Review 09).

All officers interviewed denied kicking § 87(2)(b) or observing any officer do so. When presented with § 87(2)(b) arrest photo, no officer testified to observing how § 87(2)(b) sustained the swollen eye.

Force may be used when it is reasonable to ensure the safety of a member of the service or when it is reasonable to place a person into custody. Application of force must be reasonable under the circumstances. NYPD Patrol Guide, Procedure 221-01 (Board Review 16).

§ 87(2)(g)
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§ 87(2)(g)
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§ 87(2)(b) was unable to identify the officer that allegedly kicked him in the face. All officers interviewed denied this action and no paperwork or evidence indicates that it occurred. § 87(2)(g)

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The patrol guide requires officers to be courteous and respectful when interacting with civilians. NYPD Patrol Guide, Procedure 203-10 (Board Review 58). Where an officer uses an otherwise discourteous word during a stressful encounter where that officer is attempting to maintain control of the situation, that act does not rise to the level of actionable misconduct. NYPD Disciplinary Case No. 79627/04 (Board Review 11).

§ 87(2)(g)

Allegation (R) Discourtesy: Police Officer John Nemeth spoke discourteously to § 87(2)(b)

Allegation (S) Discourtesy: Police Officer Melvin Carpio spoke discourteously to § 87(2)(b)

Allegation (T) Force: Police Officer John Nemeth used a taser on § 87(2)(b)

It is undisputed that PO Nemeth used profanity in speaking to § 87(2)(b) and then tased him.

§ 87(2)(b) testified that, as he was lying on top of PO Van Brakle, he put his hands up, over his head. He heard an officer, he did not know who, tell him, “get the fuck off my officer.” He also heard PO Carpio tell him, “get the fuck on the ground.” While he was on top of PO Van Brakle, PO Van Brakle stated, “get the fuck off of me.” Shortly after being struck with the asp, § 87(2)(b) felt PO Van Brakle begin to slide out from under him. Immediately as PO Van Brakle was sliding out, he felt a taser shock in his back (Board Review 01).

At 1:38:48 in PO Nemeth’s BWC footage, he can be seen running towards § 87(2)(b) who is on top of PO Van Brakle. It does not appear that § 87(2)(b) is doing anything with his arms. PO Van Brakle screams to PO Nemeth to tase § 87(2)(b). PO Nemeth states, “you’re about to get tased. Get off. Get the fuck off.” PO Nemeth then shoots the taser. At this point, PO Van Brakle is still partially under § 87(2)(b) and partially to the side (Board Review 30).

PO Caprio’s BWC fell off towards the beginning of the physical struggle with § 87(2)(b). Thus it did not capture PO Nemeth’s use of his taser.

PO Nemeth testified that as he approached § 87(2)(b) and the officers, he drew his taser because § 87(2)(b) was on top of PO Van Brakle. He could not recall what specifically they were doing but they appeared to be struggling with one another. PO Van Brakle screamed to PO Nemeth to tase § 87(2)(b). PO Nemeth told § 87(2)(b) multiple times to get off of the officer or he would be tased. PO Nemeth then shot the taser prongs into § 87(2)(b)’s back. He deployed one cycle. § 87(2)(b) stopped resisting and was placed into handcuffs. PO Nemeth testified that he tasered § 87(2)(b) because § 87(2)(b) was on top of PO Van Brakle, was continuously struggling, had been violently resisting, and because PO Van Brakle was screaming at him to do so. PO Nemeth was presented with his BWC footage during his interview and testified that the voice saying “you’re about to get tased” and “get the fuck off,” is his (Board Review 09).

PO Van Brakle testified that, as he was underneath § 87(2)(b) he began to lose consciousness because he could not breathe. After approximately 45 seconds, PO Nemeth approached. PO Van Brakle yelled to PO Nemeth to tase § 87(2)(b). He did so because he felt that he would lose consciousness soon and was struggling to hold § 87(2)(b). PO Nemeth gave § 87(2)(b) a couple of commands to stop resisting. He then shot taser prongs at § 87(2)(b). § 87(2)(b) tensed up as he was being tased and PO Van Brakle was able to slide out from underneath him.

PO Van Brakle then pulled on § 87(2)(b)'s arms and was able to handcuff him (Board Review 15).

PO Carpio testified that he was still physically struggling with § 87(2)(b) when PO Nemeth tased § 87(2)(b). He testified that he believed § 87(2)(b) was continuing to kick and punch but could not recall any other details about PO Nemeth tasing § 87(2)(b). PO Carpio denied using profanity when speaking to § 87(2)(b) (Board Review 10).

Where an officer uses an otherwise discourteous word during a stressful encounter where that officer is attempting to maintain control of the situation, that act does not rise to the level of actionable misconduct. NYPD Disciplinary Case No. 79627/04 (Board Review 11).

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Force may be used when it is reasonable to ensure the safety of a member of the service or when it is reasonable to place a person into custody. Application of force must be reasonable under the circumstances. NYPD Patrol Guide, Procedure 221-01 (Board Review 16). A taser should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from injuring themselves or other persons actually present. NYPD Patrol Guide, Procedure 221-08 (Board Review 60).

§ 87(2)(g)

Allegation (U) Discourtesy: Police Officer John Nemeth spoke discourteously to § 87(2)(b)

§ 87(2)(b) did not raise this allegation, however it was captured in BWC footage.

At 01:43:24 in PO Nemeth's BWC footage, a male officer tells § 87(2)(b) "Stay down, stay the fuck down." At the time, § 87(2)(b) was screaming to § 87(2)(b) repeatedly (Board Review 30).

PO Nemeth was presented with his BWC footage, which was directed to 1:43:23. He testified that it was his voice that told § 87(2)(b) to "stay the fuck down." He testified that he used the profanity because § 87(2)(b) had previously been physically aggressive when he fought multiple officers and he did not want § 87(2)(b) to become aggressive again. At this point, PO Nemeth believed that § 87(2)(b) was attempting to stand up to address his concerns about § 87(2)(b) (Board Review 09).

Where an officer uses an otherwise discourteous word during a stressful encounter where that officer is attempting to maintain control of the situation, that act does not rise to the level of

actionable misconduct. NYPD Disciplinary Case No. 79627/04 (Board Review 11).

§ 87(2)(g)

Allegation (V) Offensive Language: An officer made remarks to § 87(2)(b) based upon race.

Allegation (W) Discourtesy: An officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) raised these allegations. § 87(2)(b) did not allege it.

§ 87(2)(b) testified that at some point, he did not know when, he heard an officer, who he could not describe, call § 87(2)(b) a nigger. § 87(2)(b) also heard an officer, who he could not identify, state to him, “are you fucking crazy? Flinging chairs? Are you fucking dumb?” (Board Review 02)

Neither alleged statement was captured in any of the officers’ BWC footage.

All officers interviewed for this investigation denied making both of these remarks (Board Review 05, 09, 10, 15, 20, 21, 54, 55).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 23).
- § 87(2)(b) has been party to one CCRB complaint and has been named as a victim of no allegations (Board Review 24).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 25).
- Sgt. Chau has been a member-of-service for 13 years and has been a subject in 12 CCRB complaints and 22 allegations, none of which were substantiated. § 87(2)(g)
- PO Triolo has been a member-of-service for four years and has been a subject in two CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g)

- PO Van Brakle has been a member-of-service for five years and has been a subject in nine CCRB complaints and 22 allegations, none of which were substantiated. § 87(2)(g) [REDACTED]
- PO Carpio has been a member-of-service for three years and has been a subject in one CCRB complaint and two allegations, neither of which were substantiated. § 87(2)(g) [REDACTED]
- Det. Nelson has been a member-of-service for ten years and has been a subject in 15 CCRB complaints and 38 allegations, none of which were substantiated. § 87(2)(g) [REDACTED]
- PO Nemeth has been a member-of-service for five years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation
- § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] filed Notices of Claim with the City of New York claiming false imprisonment, physical force, and emotional suffering. They are seeking varying amounts of money as redress (Board Review 56). An inquiry into whether a 50H hearing has been scheduled was sent to New York City Office of the Comptroller.
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]

Squad No.: 1

Investigator: _____
 Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date